Transportation Appeal Tribunal of Canada

For the period ending March 31, 2007

Departmental Performance Report

The Honourable Lawrence Cannon, P.C., M.P.
Minister of Transport, Infrastructure and Communities

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SECTION I: Overview

Chairperson's Message

This reporting period of 2006-2007 represents more than 20 years of service by the Transportation Appeal Tribunal of Canada which together with its predecessor the Civil Aviation Tribunal has delivered quality service to Canadians. Also in this reporting period the awaited expansion of the Tribunal to include the marine transportation sector has materialized.

The passage of the *Marine Transportation Security Regulations* in November 2006 with its projected in force date of November 2007 brings to fruition the expanded multi-modal mandate of the Tribunal. Additionally, the *International Bridges and Tunnels Act* has received Royal Assent. This Act confirms the federal government's exclusive jurisdiction over international bridges and tunnels. It establishes a system of administrative monetary penalties for designated infractions of the legislation which may be reviewed through the Transportation Appeal Tribunal of Canada's two-level hearing process.

The Transportation Appeal Tribunal of Canada is a quasi-judicial body which adjudicates matters that have a serious impact on the livelihood and operations of the aviation, rail and marine sectors. It fulfills the essential role of providing an independent review of ministerial enforcement and licensing actions taken under various federal transportation Acts.

The Tribunal continues to conduct itself in an open, impartial manner consistent with procedural fairness and the rules of natural justice. The Tribunal encourages the use of pre-hearing conferences to assist the parties appearing before it, to identify the issues for determination by the Tribunal and to disclose and exchange documents. This reduces the length of hearings and avoids last-minute adjournments necessitated by late disclosure. This becomes an important factor given the current complexity of hearings with parties' representatives requesting hearings from five to twenty days in length.

The program's effectiveness can be measured by its ability to provide the transportation community with the opportunity to have ministerial decisions reviewed fairly, equitably and within a reasonable period of time. The average lapsed time between the conclusion of a review hearing and the issuance of a determination for this reporting period is 115 days and 76 days for an appeal. This brings the hearing process to a timely conclusion for both parties appearing before it.

Faye Smith
Chairperson

Management Representation Statement

I submit for tabling in Parliament, the 2006-2007 Departmental Performance Report for the Transportation Appeal Tribunal of Canada.

This document has been prepared based on the reporting principles contained in the *Guide for the Preparation of Part III of the 2006-2007 Estimates: Reports on Plans and Priorities and Departmental Performance Reports*:

- It adheres to the specific reporting requirements outlined in the Treasury Board Secretariat guidance;
- It is based on the Tribunal's approved Strategic Outcome and Program Activity Architecture structure that were approved by the Treasury Board;
- It presents consistent, comprehensive, balanced and reliable information;
- It provides a basis of accountability for the results achieved with the resources and authorities entrusted to it; and
- It reports finances based on approved numbers from the Estimates and the Public Accounts of Canada.

Faye Smith
Chairperson

Summary Information

Raison d'être

The mandate and the jurisdiction of the Transportation Appeal Tribunal of Canada are provided for by the *Transportation Appeal Tribunal of Canada Act*. The Tribunal's principal mandate as a multi-modal review body is to hold review and appeal hearings at the request of interested parties with respect to certain administrative actions taken under various federal transportation Acts.

The objective of the program is to provide the transportation community with the opportunity to have enforcement and licensing decisions of the Minister of Transport reviewed by an independent body. The Minister's enforcement and licensing decisions may include the imposition of monetary penalties or the suspension, cancellation, refusal to renew or refuse to issue or amend documents of entitlement on medical or other grounds. The person or corporation affected is referred to as the document holder.

These decisions are reviewed through a two-level hearing process: review and appeal. All hearings are to be held expeditiously and informally, in accordance with the rules of fairness and natural justice.

At the conclusion of a hearing, the Tribunal may confirm the Minister's decision, substitute its own decision, or refer the matter back to the Minister for reconsideration.

Financial Resources ($ thousands)

2006-2007		
Planned Spending	Total Authorities	Actual Spending
1,329.0	1,563.5	1,337.0

Human Resources (Full-time Equivalents (FTEs))

2006-2007		
Planned	Actual	Difference
9	10	1

Departmental Priorities

Status on Performance			2006-2007	
Strategic Outcome: To provide the Canadian transportation community with the opportunity to have enforcement and licensing decisions of the Minister of Transport reviewed by an independent body.				
Alignment to Government of Canada Outcomes				
Priority	**Program Activity: Expected Result**	**Performance Status**	**Planned Spending** $ thousands	**Actual Spending** $ thousands
Priority No. 1: To hold hearings expeditiously and informally	Hearings that are held expeditiously, fairly and informally	Successfully met	1,299.0	1,309.0
	Timely disposition of review and appeal hearings within service standards	Successfully met		
	Hearings conducted in accordance with the rules of fairness and natural justice	Successfully met		
	Use of pre-hearing conferences to streamline and expedite the hearing process	Successfully met		
	Quality and consistency of decision-making	Successfully met		
	Level of satisfaction by the transportation community	Successfully met		
Priority No. 2: Management Accountability Framework	Continue the implementation of modern management practices	Ongoing	25.0	25.0
Priority No. 3: Government On-line	Improve access and service performance	Ongoing	5.0	3.0

Whole of Government Framework

The Whole of Government Framework was introduced in Canada's Performance 2002, and has evolved through departmental consultations over the years.

The framework provides a structural "logic model" for the Government of Canada - mapping the contributions of departments, agencies and Crown corporations that receive appropriations to a set of high-level Government of Canada outcome areas.

To achieve its strategic outcome, the Tribunal identified three strategic priorities in its Report on Plans and Priorities. The following table outlines the Tribunal's strategic outcome and alignment to Government of Canada outcomes.

Strategic Outcome: To provide the Canadian transportation community with the opportunity to have administrative or enforcement actions under federal transportation Acts reviewed by an independent body.
Program Activity: Review and appeal hearings
Government of Canada Outcome: Safe and secure communities

More information regarding the Whole of Government Framework is available at the following address: http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/mrrsp-psgrr/wgf-cp_e.asp.

SECTION II: ANALYSIS OF PROGRAM ACTIVITY BY STRATEGIC OUTCOME

Strategic Outcome

The strategic outcome of the Tribunal is to provide the Canadian transportation community with the opportunity to have enforcement and licensing decisions of the Minister of Transport reviewed by an independent body.

Program Activity

The Tribunal's only activity is the provision of an independent review process for aviation, marine and rail by providing document holders with the opportunity to proceed with a hearing. The Tribunal represents the only forum ensuring that document holders have access to an independent assessment governed by considerations of natural justice. Its role does not overlap with, nor is it duplicated by, any other agency, board or commission. It is unique in the transportation sector in that its function is entirely adjudicative.

The Minister's enforcement and licensing decisions may include the imposition of monetary penalties or the suspension, cancellation, refusal to issue or refusal to renew documents of entitlement for reasons of incapacity or other grounds. The person or corporation affected is referred to as the document holder.

All hearings are held expeditiously and informally, according to the rules of fairness and natural justice. At the conclusion of a hearing, the Tribunal may confirm the Minister's decision, substitute its own decision, or refer the matter to the Minister for reconsideration.

The Tribunal process is able to quickly identify concerns in the transportation sector of a technical or legislative nature leading to necessary amendments to legislation for the benefit of all Canadians through the enhancement and maintenance of transportation safety in Canada.

The program's effectiveness can be measured by its ability to provide the transportation community with the opportunity to have ministerial decisions reviewed fairly, equitably and within a reasonable period of time. Tribunal hearings are readily accessible to the lay person without the attendant legal complexities and case backlogs which were visited upon the court system that prevailed prior to the creation of this Tribunal and its predecessor, the Civil Aviation Tribunal.

Overall Departmental Performance

In conducting its reviews of enforcement and licensing decisions of the Minister of Transport, the Transportation Appeal Tribunal of Canada provides a public interest program that is unique to transportation in Canada. The Tribunal's efficiencies provide visible validation and confirmation of Canada's transportation safety system. Moreover, the Tribunal process is able to quickly identify concerns in the transportation sector of a technical or legislative nature leading to necessary amendments to legislation for the benefit of all Canadians through the enhancement and maintenance of transportation safety in Canada. For 2006-2007, the Tribunal worked on 211 actual cases with a planned spending of $1,329,000 and nine FTEs. A breakdown of cases by category and region as well as reviews and appeals held over the past five years is provided in table 1 on page 11.

In the 12-month reporting period, the Transportation Appeal Tribunal of Canada registered 89 new requests for review and 15 requests for appeal from the transportation community. This represented a decrease of 40 new cases registered over fiscal year 2005-2006. In addition to the new cases registered in this reporting period, 107 cases were carried over from the previous reporting period, bringing the total caseload to 211. This represented a decrease of 61 cases over 2005-2006.

In the 2006-2007 reporting period, 52 cases were concluded without a hearing. The Tribunal heard 28 first level reviews and 11 second level appeals. This represented a decrease of 24 hearings over the previous fiscal year. Of the 39 cases that proceeded to a hearing, many cases had been postponed and rescheduled to a later date. At the end of 2006-2007, 92 cases were pending further action, 5 were still awaiting decisions and 11 had been scheduled for the 2007-2008 fiscal year.

Of the 52 cases that were concluded without a hearing, many were requests registered with the Tribunal and concluded shortly before the hearing was to take place, which means that all registry work that leads up to the hearing was completed. The registry prepared for 53 hearings. In many cases an agreement was reached between the parties. In other cases, Transport Canada or the document holder withdrew their application.

Table 1: Total Cases by Category

Category	Pacific	Prairie and Northern	Ontario	Quebec	Atlantic	HQ	Totals	%
Medicals	11	9	9	8	0	1	38	18
Suspensions	8	8	12	6	7	2	43	20
Fines	17	28	20	28	3	6	102	48
Cancellations	3	1	2	0	0	0	6	4
Refusal to issue	7	4	3	2	1	2	19	9
Rail orders	2	0	0	0	0	1	3	1
Totals	48	50	46	44	11	12	211	100
%	23	24	22	21	5	5	100	

Indicators in table 1 are actual numbers of cases. Total cases by category are not sufficient to determine all financial implications by simply forecasting the number of applications received by type of infraction and the manner in which they are resolved. However, an estimated cost average for review and appeal hearings for the past three fiscal years is presented in table 4 at page 16.

The program's effectiveness can be measured by the Tribunal's ability to provide the transportation community with the opportunity to have ministerial decisions reviewed fairly, equitably and within a reasonable period of time. Tribunal hearings are readily accessible to the lay person without the attendant legal complexities and case backlogs which were visited upon the court system that prevailed prior to the creation of this Tribunal and its predecessor, the Civil Aviation Tribunal.

The Tribunal strongly encourages its members to provide their determinations with written reasons promptly. This permits the parties to better understand the outcome of the matter and, where applicable, to make a more enlightened decision as to the exercise of their right of appeal. The average lapsed time between the conclusion of a review hearing and the issuance of a determination is 115 days. The average lapsed time between the conclusion of an appeal hearing and the issuance of a decision is 76 days. Given the increased complexity of the cases as well as the increase in number of counts contained in the notices, we are satisfied that the hearing process has been brought to a timely conclusion for both parties appearing before the Tribunal.

The Tribunal's mission is to do justice and be seen to do justice in all reviews and appeals and to resolve disputes according to the *Transportation Appeal Tribunal of Canada Rules* in all cases in a fair, independent and timely manner.

In 2006-2007, the Tribunal referred five cases back to the Minister. The Minister confirmed its original decision in one case, upheld the review determination in one case, and we are awaiting the outcome in the three remaining decisions.

The success of the Tribunal over the past 21 years can be attributed to the importance placed on the training and development of its part-time members and staff. Over the past 12 months, the Tribunal has held a two-day training session for the newly appointed members. The session was conducted in Ottawa on March 14 and 15, 2007. The new members represented both the railway and aviation sectors. The skilfully developed training programs and seminars are reflected in the quality of hearings held across the country and in the decisions rendered by Tribunal members.

Societal Indicators

The Transportation Appeal Tribunal of Canada represents the only forum for ensuring that document holders have access to an independent assessment governed by considerations of natural justice. Its role does not overlap with, nor is it duplicated by, any other agency, board or commission. It is unique in the transportation sector in that its function is entirely adjudicative. There are approximately 83 847 licensed aviation personnel and 34 858 rail personnel in Canada and approximately 28 737 registered aircraft and 3 000 locomotives in service. Because of this volume, the number of infractions will rise. The level of enforcement action is entirely controlled by Transport Canada which in turn determines the workload of the Tribunal. The Tribunal is also affected by the department's rewrite of its aviation and rail regulations including the designation of a large number of offences under the designated provisions set out in the *Canadian Aviation Regulations*.

Government Priorities

The Transportation Appeal Tribunal of Canada reports to Parliament through the Minister of Transport. Its clients currently are the aviation community, the rail community and Transport Canada. The Tribunal serves the transportation public by contributing to a safe and efficient oversight process for transportation safety and security in Canada.

Modern Comptrollership

Building on the successes achieved from activities implemented under the Modern Comptrollership initiative, the Transportation Appeal Tribunal of Canada is continuing to move forward in the implementation of modern management practices which remains a key priority.

The Tribunal continues to work in partnership with three other small agencies, namely, the Registry of the Competition Tribunal, the Canadian Artists and Producers Professional Relations Tribunal and the Copyright Board of Canada, who formed a cluster group when the Modern Comptrollership Initiative was implemented in 2001-2002.

The cluster group focused on developing an action plan in response to a request from the Secretary of the Treasury Board for an integrated management framework.
The Management Accountability Framework (MAF) sets out the Treasury Board's expectations

for good public service management. The MAF is structured around 10 key elements that collectively define "management" and establish the expectations for good management of the agency.

Initiative

The Tribunal organizes panel discussions and meetings with transportation community associations representing clients of the Tribunal to explain changes to rights, roles, responsibilities and obligations under the *Transportation Appeal Tribunal of Canada Act*, and to seek their point of view on the subject. The Tribunal also gives information sessions to law and aviation students.

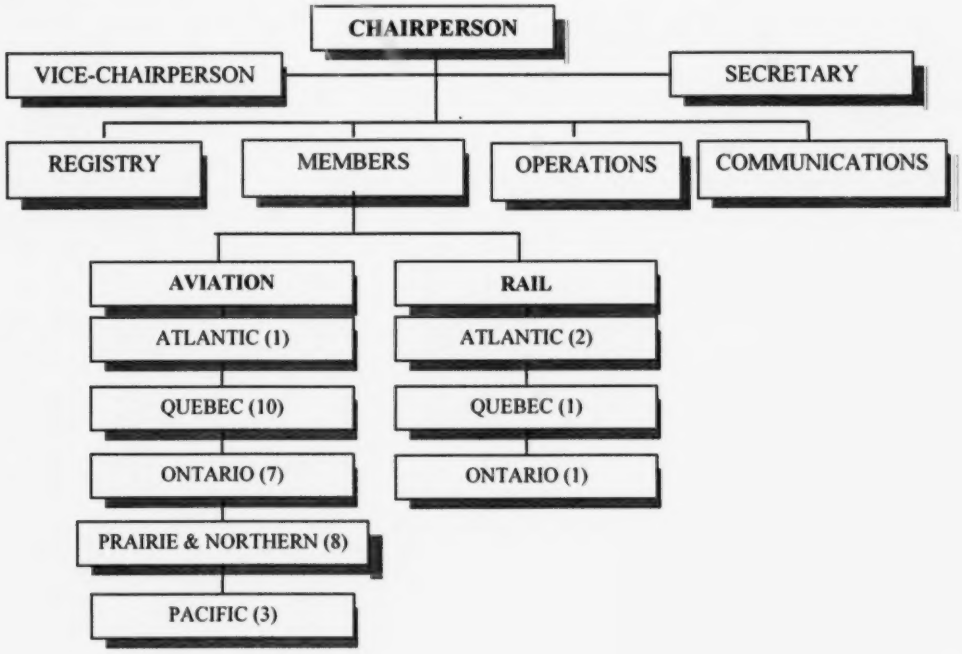
SECTION III: SUPPLEMENTARY INFORMATION

Departmental Organization

The Transportation Appeal Tribunal of Canada's only business line is to hold review and appeal hearings.

The office of the Tribunal is located in the National Capital Region. The Tribunal's Chairperson is also its chief executive officer. The Chairperson, Vice-Chairperson and immediate staff account for nine FTEs. The immediate staff carries out the functions of registry, research, communications and administrative support. The Tribunal outsources some corporate services that are not required full-time. Thirty-three part-time members were in office during 2006-2007, twenty-nine in aeronautics, including medicine, and four in rail. Members are drawn from across Canada and are appointed by order in council on the basis of their knowledge and expertise. The part-time members are remunerated for the days they serve.

Table 2: Organization Chart



- The lower half of the organization chart displays the distribution of part-time members and their area of expertise by region. All members report to the Chairperson.
- Nine FTEs are utilized by the indeterminate full-time employees including the Chairperson and the Vice-Chairperson.

Table 3: Comparison of Planned to Actual Spending (Including FTEs)

($ thousands)	2004-2005 Actual	2005-2006 Actual	2006-2007			
			Main Estimates	Planned Spending	Total Authorities	Total Actual
Provision of an independent review process	1,271.2	1,284.8	1,329.0	1,329.0	1,563.5	1,337.0
Total	1,271.2	1,284.8	1,329.0	1,329.0	1,563.5	1,337.0
Plus: Cost of services received without charge	229.8	223.9	225.8	225.8	225.8	225.8
Net cost of Tribunal	1,501.0	1,508.7	1,554.8	1,554.8	1,789.3	1,562.8
FTEs	9	8	9	9	9	10

In 2006-2007, planned spending for the Tribunal was $1,329,000. The actual expenditures were $1,337,091. The personnel costs accounted for 57% of actual expenditures and operations accounted for 43%. The cost for preparing and holding hearings was $265,861.

Effective June 30, 2003, the *Aeronautics Act* amendments changed the procedure for the *Designated Provisions Regulations* so that the Minister is no longer the applicant, rather the person who receives the notice of assessment of monetary penalty either pays the stated penalty or files a request for review with the Tribunal. This has reduced the number of files which the registry had heretofore opened and closed shortly thereafter when the hearing request was automatically triggered by non-payment of the penalty. Consequently, the number of requests for certificates of non-payment has increased offsetting the decrease in number of case files. In fiscal year 2005-2006, there were 128 cases and 42 requests for certificates while in 2006-2007, there were 89 new cases and 30 requests for certificates.

Table 4: Average Costs for Reviews and Appeals

	2006-2007	2005-2006	2004-2005
Reviews	$4,599	$5,134	$3,943
Appeals	$4,463	$7,249	$3,557
Reviews and Appeals Held	39	63	45
Monthly Average	3.25	5.25	3.75
Caseload	211	272	269

When comparing the types of hearing actions, there are significant variances in resources spent due to uncontrollable factors such as location, travel, time spent on hearings, remuneration, interpreters, preparation, decision writing, costs for court reporting, transcripts and translations. The Chairperson and Vice-Chairperson presided over 10 of the 39 cases. Sometimes, cases are heard together to reduce costs. The average costs fluctuate each fiscal year as they are determined by the number of reviews and the complexity of cases.

Table 5: Resources by Program Activity

2006-2007						($ thousands)
Provision of an independent review process	Budgetary				Plus: Non-Budgetary	Total
	Operating	Capital	Less: Respendable Revenue	Total: Net Budgetary Expenditures	Employee Benefit Plans	
Main Estimates	1,200.0	-	-	1,200.0	129.0	1,329.0
Planned Spending	1,200.0	-	-	1,200.0	129.0	1,329.0
Total Authorities	1,437.6	-	-	1,437.6	125.9	1,563.5
Actual Spending	1,211.1	-	-	1,211.1	125.9	1,337.0

Table 6: Voted and Statutory Items ($ thousands)

Vote or Statutory Item	Truncated Vote or Statutory Wording	2006-2007			
		Main Estimates	Planned Spending	Total Authorities	Actual
80	Operating expenditures	1,200.0	1,200.0	1,437.6	1,211.1
(S)	Contributions to employee benefit plans	129.0	129.0	125.9	125.9
	Total	1,329.0	1,329.0	1,563.5	1,337.0

Table 7: Services Received Without Charge

($ thousands)	2006-2007
Total Actual Spending	1,337.0
Plus: Services Received without Charge	
Accommodation provided by Public Works and Government Services Canada	173.8
Contributions covering the employers' share of employees' insurance premiums and expenditures paid by Treasury Board Secretariat (excluding revolving funds)	52.0
2006-2007 Net cost of Tribunal	1,562.8

Financial Statements

In its Annual Report for the fiscal year 2006-2007 (http://www.tatc.gc.ca/doc.php?lang=e&DocID=56), the Tribunal includes financial statements that provide an accounting of the Tribunal's administration of its public financial affairs and resources.

Financial statements are prepared in accordance with accrual accounting principles. The unaudited supplementary information presented in the financial tables in the Annual Report is prepared on a modified cash basis of accounting in order to be consistent with appropriations-based reporting.

ANNEX 1

Future Plans

The Standing Senate Committee on Transport and Communications adopted Bill C-34 to establish the Transportation Appeal Tribunal of Canada on the recommendation of private industry. The predecessor Civil Aviation Tribunal had maintained a level of independence and impartiality which has allowed it to operate in a manner that respects the principles of fairness and natural justice. The mandate of the Civil Aviation Tribunal has now been expanded to act as a multi-modal review body for administrative and enforcement actions taken under various federal transportation acts. *An Act to establish the Transportation Appeal Tribunal of Canada and to make consequential amendments to other Acts* (Bill C-34) received Royal Assent on December 18, 2001 and was proclaimed in force by order in council on June 30, 2003.

The *Transportation Appeal Tribunal of Canada Act* amends the *Aeronautics Act*, the *Canada Shipping Act*, the *Canada Transportation Act*, the *Marine Transportation Security Act* and the *Railway Safety Act* to establish the jurisdiction and decision-making authorities of the Tribunal under those Acts.

The *Marine Transportation Security Regulations*, passed in November 2006, have an in force date of November 2007. As well, the *International Bridges and Tunnels Act* has received Royal Assent. It establishes a system of administrative monetary penalties reviewable by the Tribunal's two-level hearing process.

Government of Canada On-line

In 2007-2008, the Tribunal will continue to improve the delivery of its key services to the public for greater efficiencies and increased client satisfaction and will improve access and service performance by making major modifications to its Web site and by providing Internet links.

Statutory Annual Report

Under section 22 of the *Transportation Appeal Tribunal of Canada Act*, the Tribunal shall, not later than June 30 in each fiscal year, submit a report of its activities during the preceding fiscal year.

SECTION IV: OTHER ITEMS OF INTEREST

Contacts for Further Information

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Internet Web Site: www.tatc.gc.ca

Faye Smith – Chairperson
Mary Cannon – Registrar (Ontario, Prairie & Northern and Pacific Regions)
Monique Godmaire – Registrar (Headquarters, Quebec and Atlantic Regions)
Suzanne Lagacé – Communications Manager
Carl Poulin – Executive Services Manager

Statutes and Regulations Currently in Force

Transportation Appeal Tribunal of Canada Act	S.C. 2001, c. 29
Aeronautics Act (and subordinate legislation) *Canadian Aviation Regulations*	R.S.C. 1985, c. A-2, as amended SOR/96-433, as amended
Canadian Transportation Agency Designated Provisions Regulations	SOR/99-244, June 11, 1999
Railway Safety Act	R.S.C. 1985, c. 32 (4th Supp.)
Transportation Appeal Tribunal of Canada Rules	SOR/93-346, as amended
Marine Transportation Security Regulations	SOR/2004-144, May 21, 2004
International Bridges and Tunnels Act	2007, c. 1

Statutory Annual Report and Other Departmental Reports

Report on Plans and Priorities 2007-2008
Annual Report 2006-2007
Guide for Applicants

Reference

The tables are presented under five categories:

SUSPENSIONS	CANCELLATIONS	FINES
– AME*	– AME	– AME unpaid fine
– AMO**	– certificate of airworthiness	– ATC*** unpaid fine
– CCP****	– operator	– aircraft owner unpaid fine
– operator certificate	– personnel security	– operator security unpaid fine
– operator security	– pilot	– operator unpaid fine
– personnel security		– pilot unpaid fine
– pilot competence		
– pilot enforcement		
– pilot instrument rating		
– pilot proficiency check	**REFUSAL TO ISSUE**	**MEDICALS**
	– AME	– ATC
	– medical certificate	– pilot
	– pilot and others	

* AME (aircraft maintenance engineer)
** AMO (approved maintenance organization)
*** ATC (air traffic controller)
**** CCP (company check pilot authority)

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